

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JHEN SCUTELLA,)	
Plaintiff,)	
)	C.A. No. 23-116 Erie
)	
v.)	
)	District Judge Susan Paradise Baxter
ERIE COUNTY PRISON, et al.,)	Chief Magistrate Judge Richard Lanzillo
Defendants.)	

MEMORANDUM ORDER

Plaintiff Jhen Scutella, an inmate formerly incarcerated at the Erie County Prison in Erie, Pennsylvania,¹ initiated this civil rights action by filing a *pro se* complaint, pursuant to 42 U.S.C. § 1983, against Defendants Erie County Prison (“ECP”), Deputy Warden Bryant, and Deputy Warden Michael Holman (incorrectly identified as “Mikey Holman”) (collectively referred to as “ECP Defendants”); Wexford Health Services (“Wexford”) and Medical Supervisor Michelle Earley (collectively referred to as “Medical Defendants”); and two additional Defendants identified as “Dental Assistant Louise” and “John Doe.” This matter was referred to Chief United States Magistrate Judge Richard A. Lanzillo for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

Plaintiff claims that Defendants violated his first, eighth, and fourteenth amendments to the United States Constitution, and committed state law torts of harassment, terroristic threats,

¹
From his court filings, Plaintiff appears to have been released from ECP in or around January 2024 [ECF Nos. 30, 37].

and intentional infliction of emotional distress, based on the allegedly deficient dental care he received during his confinement at ECP in early 2023.

On January 17, 2024, the ECP Defendants filed a motion to dismiss for failure to state a claim [ECF No. 31], and the Medical Defendants filed their own motion to dismiss for failure to state a claim on January 19, 2024 [ECF No. 34]. Plaintiff filed a response [ECF No. 38] and brief in opposition [ECF No. 39] on February 7, 2024.

On May 24, 2024, Judge Lanzillo issued a Magistrate Judge's Report and Recommendation ("R&R") recommending that both the DOC Defendants' and the Medical Defendants' motions to dismiss be granted, and that Plaintiff's claims against Defendant ECP, his First Amendment claims based upon denial of a grievance, and his state law claims, be dismissed with prejudice; that Plaintiff's request for compensatory damages in a sum certain be stricken; and that Plaintiff's constitutional claim based on deficient dental care be dismissed, without prejudice to Plaintiff's right to amend such claim. In addition, the R&R recommends that Plaintiff's claims against Defendants Dental Assistant Louise and John Doe be dismissed pursuant to 28 U.S.C. §§ 1915(c)(2)(B) and 1915A(b). [ECF No. 41]. Objections to the R&R were due to be filed by June 10, 2024; however, no timely objections have been received.

Thus, after *de novo* review of the complaint and documents in the case, together with the report and recommendation, the following order is entered:

AND NOW, this 14th day of June, 2024;

IT IS HEREBY ORDERED that both the DOC Defendants' motion to dismiss [ECF No. 31] and the Medical Defendants' motion to dismiss [ECF No. 34] are GRANTED, as follows:

(i) Plaintiff's claims against Defendant ECP, his First Amendment claims based upon denial of a

grievance, and his state law claims, are DISMISSED with prejudice; (ii) Plaintiff's request for compensatory damages in a sum certain is stricken; and (iii) Plaintiff's constitutional claim based on deficient dental care is DISMISSED, without prejudice to Plaintiff's right to amend such claim to correct the deficiencies noted in the R&R within twenty (20) days of the date of this Order. In the event Plaintiff fails to file an appropriate amendment within such time, the Court's dismissal of Plaintiff's constitutional claim based on deficient dental care will be converted to a dismissal with prejudice, and this case will be dismissed without further notice.

IT IS FURTHER ORDERED that Plaintiff's claims against Defendants Dental Assistant Louise and John Doe are dismissed pursuant to 28 U.S.C. §§ 1915(c)(2)(B) and 1915A(b). The report and recommendation of Chief Magistrate Judge Lanzillo, issued May 24, 2024 [ECF No. 41], is adopted as the opinion of the court.

The Clerk is directed to terminate Defendants Erie County Prison, Dental Assistant Louise, and John Doe from this case.


SUSAN PARADISE BAXTER
United States District Judge

cc: The Honorable Richard A. Lanzillo
Chief United States Magistrate Judge